INDEX

Administration of justice, Administrative law-cont. adversarial system, 234-235 Takeover Panel's immunity under appeals, threat, 158 annual review, 1989-90, 116 Adoption. civil, management of, 116 biological parents, information on, out of time: legal aid delays, 444 326-327 assistance in conducting proceedings, counselling, 327-328 612 - 13potential menace, 329-330 certiorari to correct injustice, 127 public policies and, 326-331 child care cases, 116 Appeals, civil cases: expedition, 443 administrative, 6-10 Civil Justice Review, 443 contempt of court, 282 contempt of court education: procedure, 118 appeals, 282 judicial review of criminal matter, 128 pending proceedings, 444 Scottish cases with EC element, 120. county court See also Administration of justice Anton Piller orders and Mareva Armed forces. call out of reserves during Gulf War, injunctions, 443 jurisdiction, 443 170-175 court martial jurisdiction, 171-172 court jurisdiction, 443 Crown Prosecution Service: judicial Crown prerogative, 170-171 review of decision to prosecute, ground for resisting, 172-173 452 protection from legal remedies, 174 designated family judges, appointment reinstatement in civilian of, 116 173-174 exchange of witness statements, 296-7 specialist units, 174-175 issue estoppel: exceptional cases, 443 disciplinary action against member not judicial appointments (England and reviewable (France), 300 Scotland), qualifications for, 282 discrimination in, 129, 320-322 legal aid offences by reservists, 171-172 children's financial assessments, 265 Asylum. See Immigration delays, 444 regulations, 283 Barlow Clowes affair, 192-214, 408-442 reports, 601 Gower Reports, 195-196 miscarriage of justice, 283, 444 Le Quesne inquiry, 196-200 offences triable either way: joint Ombudsman defendants, 613 Government's response, 408-416 perversity of justices, 127 corrective, remedial and disciplinreporting restrictions, 116 ary action, 432-436 single justice, power of, 613. See also inquiry by, 201-206 Legal advice at policer stations: inquiry's conclusions, 206-214 Prerogative of mercy: Procedure: jurisdiction of, 421-426 Right of silence maladministration, limited scope of, Administrative law, 427-432 media response, 416-419 appeal mechanisms, 6-7 Council on Tribunals, role of, 6-10 Select Committee on, 436-439 European Convention on Human value of investigation, 436-442 Rights, role in, 49-51 Bill of Rights, partnership between courts and public application of, in New Zealand, 29-34 bodies, 345 for Hong Kong, 175-180 public policy, 326-331 within China's Basic Law, 176-177 Review Commission, need for, 10 likely success of, 179-180 secrecy of executive decision-making, National people's Congress Standing 39-40 Committee (N.P.C.S.C.), interseparation of powers, Takeover Panel, pretation by, 177

reaction from Beijing, 179

and, 150

considerations,

proposals for

religion.

Bill of Rights-cont. for Hong Kong—cont. status of, 177–178 Blasphemy and racial hatred, legislative reform, 371-385 arguments for reform, 371-374 philosophical 376-377 political concerns, 374-376 Public Order Act, revision, 377-379 practical difficulties, 382-384 redrafted provisions, 378-379 Rushdie affair, impact on, 384-385 technical problems and their resolution, 379-382 expert evidence, 382 379-380 power to prosecute, 362 special artistic defence, 381-382 specific intent, need for, 380-381 Broadcasting. British courts' lack of influence on, 93 Broadcasting Act 1990, 283 Complaints Commission report, 601 discretion to restrict: proportionality, 283-284 German and Italian constitutional courts on their national systems, 93-115 interviews with terrorists, 93, 116, 283-284, 346-353 Brind case attitude

expression, 347-348 European Convention on Human Rights, 348-349 proportionality and unreasonableness, 349-353 ownership rules, 116, 444 public decency in, 26 Cabinet. collective responsibility, 3-4 prime ministerial government, 1-6

towards freedom of

definition

Certiorari. background to, 65-66 to correct injustice, 127. See also Remedies in public law, Children. adoption. See Adoption carecentres located, 116 deportation of juvenile, 132 designated family judges appointed, medical treatment of ward of court, 123

Civil Service, Appeal Board, 340-346 character of, 341 susceptibility to judicial review, 340 committee system, 4 contracts of employment and civil servants, 485-490 EC nationals free to compete for posts, 449 immigration officers as civil servants, 124 judicial review and civil servants, 485-490 Next Steps agencies: reports, 122, 287, 449,605 outside appointments, 605 Pay and Conditions Code, 486-487 Security Commissioner's report, 449 Commonwealth, constitutional protection of human rights in, 477-480. See also Human rights Namibia Act 1991, 284 Pakistan's re-admission, 117 security investigations, 218, 231 Community charge, capping and judicial review, 76-92, 125-126 appropriateness of and limitations of remedy, 88-92 80-82 grounds of challenge, 82-88

Hammersmith and Fulham case, capping powers, 79-80 regulations, 128 Confidentiality, access to files, 601 access to health records, 122-123 census, disclosure of personal information, 284 computer records, search and seizure of, under statutory powers, 121 confidentiality action, 444-445 contempt of court after Millett injunctions, 444-445

Data Protection Registrar's reports, 285, 445, 601 defendants' names in child abuse cases. deportation hearings, in, 337

disclosure to European Commission of documents read in camera, 445 documents seized by police, 117 interception of communications, 445

liquidators' disclosures, 601 Mental Health Review Tribunal proceedings, 284

Police Complaints Authority correspondence, 117

Confidentiality—cont. public interest immunity, 117	Crown Prosecution Service—cont. police-solicitor relations improved by,
seizure of documents, production in	237
civil proceedings, 601 telephone numbers called (France),	Declarations, background to, 67. See also Remedies in public law
301 Constitutional law,	Deportation, 331-339
property rights, 541–543	advisory panel, 332–337
reform, 446	Canadian experience, 337–339
Treaty of Union overrriding jurisdic-	during Gulf War, 331–339
tion of nobile officium, 445–446	habeas corpus to contest legality of
U.K. written constitution, absence of,	detention, 333
554	of juvenile, 132
Consumer protection,	national security
duty to consult, 167–170	administrative/judicial decision,
Consumer safety,	334–336
disclosure of sources relied on, 169	no right of appeal, 332
Council on Tribunals, 6-10	and "public good," 333–334
on delay in tribunal process, 9	right to family life under ECHR (France), 458–459
fresh look needed, 10	Discrimination,
on NHS complaints procedure, 8	EC law on, 57
on Ombudsmen, 7–8	exemplary damages, 118
role in grievance procedure, 6-9	Fair Employment in Northern Ireland,
Courts,	report 1989–90, 118
access to, in EC law, 55, 59-61	racial
exclusion of public, 600	evidence of right to work, 118
House of Lords, finality of decision.	medical appointments, 285
600	in public sector, 317-325
Israeli, 523-537. See also Israeli courts	armed forces, 129, 320-322
and politics	exemplary damages, liability to,
judicial statistics, 601	325
Parole Board as, under EC law, 37	national security exemption, 318
powers of, on review, 600	NHS registration, 322–325
Privy Council, record of, in human rights cases, 478–479	no general immunity for statutory
Criminal injuries compensation,	powers, 319
Council on Tribunals, and, 9	police, 319–320
management review, 602	racial hatred, 371-385. See also Blas-
work of Board, 118	phemy and racial hatred
Crown,	teachers' appointments, 51–52, 118
contempt jurisdiction, 602	time when act committed, 285 sex
prerogative	dismissal through illness, 286
to call out reserve forces,	EC law's approach to, 59–61
170-171	French constitution: teaching post in
mercy. See Prerogative of mercy	prison, 616-617
security matters, 232	legal services, in, 285
Crown immunity,	pensionable age, 446
Australia's flexible approach to,	pregnancy in EC law, 159-163
362–370	causation principle, 162
Bropho case, 364-367	illness after maternity leave,
penal legislation, application to,	162–163
368–369	justification, 161–162
common law presumption, 361	refusal to appoint pregnant appli-
history of, 363–364 health service bodies not immune, 122	cant, 285-286
meanin service boules not minhune, 122	retirement age, 445

"shield of the Crown" issues, 369-370

judicial review of decision to pros-

Crown Prosecution Service,

ecute, 443

rity tive/judicial decision, appeal, 332 c good," 333-334 mily life under ECHR , 458-459 mages, 118 nent in Northern Ireland, 989-90, 118 f right to work, 118 pointments, 285 ector, 317-325 rces, 129, 320-322 ry damages, liability to, security exemption, 318 istration, 322-325 ral immunity for statutory vers, 319 19-320 ed, 371-385. See also Blasy and racial hatred ppointments, 51-52, 118 act committed, 285 hrough illness, 286 pproach to, 59-61 stitution: teaching post in , 616-617 es, in, 285 le age, 446 in EC law, 159–163 n principle, 162 after maternity leave, -163ion, 161-162 appoint pregnant appli-285-286 retirement age, 445 unlawful advertisement, 446 Education, appeals against allocation, 118

Education-cont. appointments procedural requirements, 452 racial discrimination in, 51-52 discrimination in (France). schools admission policy, 602-603 selection of pupils, 447 tenure of academic staff, 602 universities fees, 452 tenure, 447 visitor subject to judicial review, 447 witholding grant, conditions for, 602 Flections candidates' expenses, 447 local franchise for EC residents, 119 proxy or postal vote after change of address, 119 regulations, 448 returning officers' expenses, 447 Employment. discrimination on grounds of pregnancy, 159-163 French labour Code: penalties on strikers, 136 Environment. Environment Protection Act 1990, 286 integrated pollution control, 286 protection policies, 119 Scottish Natural Heritage, 603 European Community (EC) law, access to courts, 59 Brussels and Luxembourg combining, 61-63 case law, 56 civil service posts, eligibility for, 449 construction of Community texts. 448 creating European public law, 53-63 developments, 128, 286 directives effect on domestic law (France). 614-616 procedure for adopting, 603 13th, on Company law. See Takeover Panel disclosure to Commission of documents read in camera, 445 discretionary life sentences, 34-40 release procedures and Strasbourg Court, 35-37 U.K. implications, 36-37, 120-121 alternatives open, 38-40 Parole Board as "court," 37 discrimination on grounds of pregnancy, 159-163

economic, monetary and political union, Committee report, 120 European Community (EC) law-cont. economic rules affecting domestic laws. 56-57 harmonising influence, 53-54 law reform, as source of, 58 legal certainties and expectations, protection of, 57-58 legal rights, protection of, 180-191 lack of adequate remedy, 188-190 national court's role in application of Community law, 187-188 legal traditions of Member States. effect of, 57-58 local elections, franchise for EC residents, 119 market freedoms, 57 national courts, power of, 448 parliamentary committees on European legislation, 130 parliamentary European Standing Committee, 295 parliamentary sovereignty, 119, 603 preliminary rulings request for, 604 scope of, 286 proceeds from crime, Convention on, 605 professional qualifications legal profession, 448 recognition regulations, 448 proportionality, 58 Scottish appeals for jurisdiction, 120 silencer ban contrary to EC law. 119-120 Sunday trading legislation, 286, 454 temporary disapplication of Act of Parliament, 180-191 European Court's ruling, 182-185 Factortame decision, background to, 180-182, 603 House of Lords' acceptance of ruling, 185-7, 190-191 interim protection, as, 180, 183 U.K. legislation: compatibility with treaty and law, 603-604 See also European Convention on **Human Rights** European Convention on Human Rights, access to courts under, 55, 59-61 British courts' attitude to, 353-355 detentions during Gulf War, and, 520-521 discretionary life sentences, on, 34-40 effect on domestic laws, 54-55 English blasphemy laws, and, 372-373 English courts' non-implementation. French decisions on, 134 impact on domestic law, 555-567

Clowes affair

Euorpean Convention on Human Rights—cont.	Freedom of person—cont. detention—cont.
Court of Justice's stance, 555–565	review of, 120-121
implications for British courts.	
	family life, right to, 458-
566-567	reasonableness of arrest,
restraint on Community, 556-560	refugee status: composit
restraint on Member States, 560-565	(France), 134–135
incorporation into domestic law, dis-	See also Geneva Conven
cussions on, 123	detentions during Gulf
institutions created by, 54	Prisons
procedural developments, 353-361	Freedom of property,
committee system for inadmissible	aviation security, 121
petitions, 356, 360	EC Convention on p
contemporary, 353–357	crime, 605
medium term, 357–359	entry powers, 604
longer term, 359–360	international terroris
ratification in U.K., 40-41	against, 121
Scots law, and, 40-51. See also Scots	maritime security, 121
law	search and seizure power
Expenditure and Finance, Excess Votes	Anton Piller orders,
reports, 286	precluded from gr
Extradition,	under Computer Mis
abuse of process, 287	121
committal proceedings: magistrates'	Human fertilisation ar
powers, 448-449	Authority, 287
public interest immunity in proceed-	search warrants, scope o
ings, 117	Monopoly powers, of
undertaking by state: effect of future	
change of sovereignty, 449	
	Geneva Conventions,
Family life,	detentions during Gulf V
European Convention on Human	applicability of
Rights, and, 556	508-509, 517-519
Foreign relations,	foreign nationals, 509-
capacity to sue, 287	alleged P.O.W., 514
state immunity and insolvency, 604	civilians, 509–514
France,	immigration legislation
Commission nationale de la communi-	relationship with, 51
cation et des libertés (CNCL), 94	prerogative, relation
Conseil constitutionnel, 94	519–520
courts' influence on broadcasting, 94	Germany,
recent decisions of Conseil d'Etat,	constitutional court's inf
134–137, 299–301, 458–462,	broadcasting, 93-105,
614-617	constitutional backgrour
sheep imports, 126	decisions of Court, 98-1
Freedom of expression,	historical background, 9
broadcasting	Government,
Germany's Basic Law of 1949, 97–98	accountability, 16
Italian constitution on, 107–110	agencies, 122
statements by terrorists, 93, 346–353	contracts preference sch
Interceptions Commission, 228	terminated, 122
press reporting, 605-606	delegation to officials
Freedom of person,	powers of immigration
abortion statute (France), 135	124
conscientious objector, right to be	Ministers' salaries, 294
recognised as (France), 134-135	Next Steps agencies. See
detention	pay and conditions, 122

of mental patients, 450

prior to deportation, 333

eview of, 120-121 ily life, right to, 458-459, 557 sonableness of arrest, 120 igee status: composition of tribunal (France), 134-135 also Geneva Conventions. etentions during Gulf War: ation security, 121 Convention on proceeds from terrorism. security ritime security, 121 rch and seizure powers Anton Piller orders, county court precluded from granting, 443 inder Computer Misuse Act 1990, Human fertilisation and Embryology Authority, 287 rch warrants, scope of, 605. See also Monopoly powers, control of, entions during Gulf War, 507-522 of Conventions, 508-509, 517-519 oreign nationals, 509-516 alleged P.O.W., 514-516 civilians, 509-514 mmigration legislation. relationship with, 519 relationship with, stitutional court's influence on proadcasting, 93-105, 113-115 stitutional background, 97-98 cisions of Court, 98-105 torical background, 96-97 ntracts preference scheme egation to officials powers of immigration adjudicators. nisters' salaries, 294 xt Steps agencies. See Civil Service pay and conditions, 122 pressure groups, 418. See also Barlow

Government-cont.

Prime Minister, election of Major, 121-122

prime ministerial, end of, 1-6

review of Ministers' actions, limits on, 82-85

rule of law, 29-34

separation of powers, Takeover Panel, and, 150

trading funds for departments,

Gulf War.

call out of reserves. See Armed forces deportations during. See Deportation detentions. See Geneva Conventions

Habeas corpus,

background to, 65

not available as post-conviction remedy, 388. See also Remedies in public law

Health and medical treatment,

abortion: conscience clause, 450 access to medical records, 122-123

complaints procedure, Council on Tribunals on, 8

detention of mental patients, 450

discrimination in NHS registrations, 322-325

faute dans l'organisation et le fonctionnement du service (France), 461-462

Human Fertilisation and Embryology Act 1990, 288

National Health Service and Community Care Act 1990, 255–281

general practice,

audit requirements, 259-263 complaints scheme, 263-264

defending malpractice actions, 264-267

preventative and screening provisions, 257–259

terms of service, 257-259

ministerial circulars, reliance on, 266-267

NHS contracts and internal market, 122, 269-278

NHS Trusts, 122, 267-269

new treatment, liability for (France), 461-462

overworked doctor, 288

public interest immunity in selfsufficiency in blood products, 117 treatment of infant ward.

considerations of court, 123, 605

Hong Kong,

Bill of Rights for, 175-180

Housing.

homelessness

definition, Scotland, 288

intentional,

meaning of, 450, 605

tests for, 123

judicial review case-load, 495–496 suitable accommodation, meaning of, 450

Human rights,

arrest: right to legal advice, 451

Citizen's Charter, 606

Commonwealth

Commonwealth Law Reports, 480 constitutional protection in, 477–480 Harare Declaration, 477

interpretation of protected rights, 479–480

Judical Committee of Privy Council, record of, 478–479

discretion to restrict broadcasting, 283-284

European Convention on Human Rights, and, 555–556. See also European Convention on Human Rights

freedom of press, 605-606

revenue investigation powers (N.Z.), 606

sex change, 123

Immigration,

adjudicators' powers, 124 administrative delays, 124

asylum cases

judicial review case-load, 493–495 procedure for challenge, 607–608 simplification of procedures, 608 statistics, 124, 608

carriers' liability, 124

changes in rules, 124, 288, 452

deportation,

after 20 years, 451

asylum, and, 451

delegation of powers to officials,

DNA testing for family relationships,

EEC nationals (France), 136

false representation, meaning of, 124 forum non conveniens, 606

fraudulent entry, 607

judicial review case-load, 493-495 national security non-justifiable, 288

proof of citizenship, 607 refugee status, determination of, 451-452

statistics, 608

Injunctions, Judicial review-cont. background to, 67. See also Remedies legitimate expectation. See Legitimate in public law, expectation Israeli courts and politics, 523-537 local authorities in conflict with determination on merits, 524-533 government, 88-92 Acts of State, 525-526 national security: exclusion of review, criminal justice, 526-528 emergency regulations, 528-529 nature of proceedings, 608-609 judicial review of statutes, 529-530 NHS contracts, 273 parliamentary proceedings, 530-531 perversity, 127 political agreements, 532-533 poll tax capping, principles of review, judicial involvement, reasons for, 76-92, 125-126 533-535 prerogative of mercy. See Prerogative public interest, 535-536 of mercy standing and justifiability, 523-524 private professional bodies (France). 460-461 constitutional court's influence on privatised industries, regulation of, 19 broadcasting, 95, 105-115 procedural fairness, 13 decisions of court, 108-113 procedural requirements, 452 freedom of expression provisions, proportionality in EC law, 58. See also 107-108 Proportionality political influence on, 106-107 public and private law distinguished, Judicial review, reasons. See Reasons for decisions alternative grounds for review, 127 relevant considerations, 298 alternative remedies, 127-128, 453 and EC law, 608 amenability to, 290 representations, lack of opportunity to application procedure and tactical litimake, 19 gation, 158 scope of, in domestic issues, 127 case load, 490-499 self-regulating organisations agencies challenged, 498-499 (S.R.O.s), amenity to, 12-14, 609 applicants, 497-498 Social Fund: policy directions, 452 subject areas, 491-497 statutory powers: purposive construccertiorari to correct injustice, 127 tion, 126-127 Chief Rabbi not subject to, 290 Takeover Panel, of, 149 civil servants, and, 485-490 increased scope for, 153-155 time limits, 127-128 constitutional basis for, 353 Council on Tribunals, interrelation University visitor subject to, 447 with, 6 unreasonableness counsel's opinion in "Fares Fair" litigaduty to give reasons, 296 tion (1983), 499-506 irrelevant considerations, 452 criminal cause or matter, 128 validity of decision, 126 criminal proceedings, jurisdiction to validity of regulations, 297-298 stay, 131 severance, 126 Crown Prosecution Service: decision to vexatious litigant: requirement for prosecute, 452 leave, 609 discovery under Financial Services Act Wednesbury unreasonableness, 13-14, 1986, 10-15 83-85, 351-355. See also Comdomestic bodies not subject to review, munity charge; Remedies in public law EC law, influence of, in development, appointment qualifications, 282 counsel's meeting with judge, 131-132 findings of fact, 289 government change of policy: right to court welfare officer: consultation in be consulted, 289 judge's room, 297

designated family judges appointed,

freedom of expression in broadcasting,

116

on, 93

interlocutory decisions, 14-15

power to set aside, 453

leave to apply

effect of, 345

Judiciary -cont. judicial review discretion in, 64-75 role of, in, 89-90 Security Commission, role in, 220. 228-230 Justice/All Souls Committee. on proposed Administrative Review

Commission, 10

Law reform. Draft Criminal Code (Law Commission), 29 EC law, effect of, 58 Law Commissioners: qualifications, 128 reports, 128, 609 Legal advice at police stations, 233-254 advisers, categories of, 236 confessions, 240-241 PACE practices, 237, 252 police benefits from, 239-243 police relations, 236-237, 242 recommending solicitors, 238-239 research, 253-254 Legal aid. See Administration of justice Legal profession. conditional fees, 291 conflict of interests, 609 Courts and Legal Services Act 1990, 290-291 discrimination in legal services, 285 Lay Observer's reports, 292, 453 Legal Services Ombudsman, 290-291 payment of costs by solicitor, 292, 443 qualifications: recognition in EC, 440 representing clients after merger of practices, 292 right of audience, 291 Scottish Legal Services Ombudsman, Scottish reforms, 291-292

Scottish speculative fee basis, 292 solicitors: judicial appointments, 282. See also Legal advice at police stations: Right of silence Legitimate expectation. 163-170. 289 meaning of, 165 reasons stated and unstated, 165-167 statutory duty to consult, 167-169 Local authorities. discrimination, exemplary damages against, 118 exercise of public function, 118

judicial review as remedy for, 88-92.

See also Community charge

misfeasance in public office, 133

central government control, 582-583 instrumentalist legislation, 583-590 Veeder inquiry, 586-590 courts and public law litigation, 590-599 swaps transactions, case for retrospective legislation, 571-574 effect of ultra vires decision, 571 Hammersmith case in Lords. 569-571 critique of, 590-595 restitution basis of, 575-576 legal action for, 581-582 payments of, 577-581 Local government. caravans: rating, 292 Community Charge Acts passed, 453 early introduction in Scotland: nobile officium inapplicable. 445-446 regulations, 293 replacement by council tax, 454 competitive tendering, 454 counsel's opinion in "Fares Fair" litigation (1983), 499-506 financial help to strikers (France), 299 swap transactions, 434-435. See also Local authority financing libel actions by authorities, 454 public auditor's reports, public right of inspection, 610 removal of councillor, 293 review, 454 single tier: consultation paper, 610 structure and financing, 293 Sunday trading: injunctions and undertakings as to damages, 454

Local authority financing, 568-599

Mandamus.

background to, 66-67. See also Remedies in public law Mental Health. tribunal preferance for caution, 38-39 Mercy. See Prerogative of mercy Ministers. directions, Bill of Rights, and, 34 right to change policy despite, legitimate expectation, 166, 289 Monopolies and Mergers Commission. Secretary of State's direction not to

refer, 16 Monopoly powers, control of, modern context, 551-554

Monopoly powers, control of—cont. United Kingdom, 538–543 jus publicum, 540 public property rights, 553–554 U.S.A., 543–551 due process doctrine, 548–551 public interest element, 546–547

National Health Service. See Health and medical treatment Nationality and Citizenship.

citizens and protected citizens: status, 455 EC nationals in France, 614-616

Hong Kong: British citizenship, 128–129. See also Hong Kong qualifications for citizenship, 129, 610 Natural justice,

assistance in conducting proceedings, 611

bias, appearance of, 293–294 discrimination in armed forces, 129. See also Discrimination duty to consult, 167–169

duty to give reasons. See Reasons lack of right to in legislative context.

procedural impropriety and, 167–168 right to be consulted. See Legitimate expectation

self-regulatory bodies, 610

Netherlands,

European Convention on Human Rights effect of, on domestic law, 55-56

Northern Ireland.

interviews with terrorists, 93, 116, 283–284 reasonablness of arrest, 120

Obscene publications.

broadcasting, 283. See also Public decency

Ombudsmen.

Council on Tribunals and, 8 one-person tribunals, critcism, 7–8 jurisdiction, 294

Legal Services, 290-291

Parliamentary Commissioner and Barlow Clowes, 192–214, 408–442. See also Barlow Clowes affair pensions, 7–8, 133

prerogative of mercy, no jurisdiction as to, 387

reports, 129, 294, 455, 611

Parliament.

Advisory Committee on Statute Law.

Parliament-cont.

all-party concern over Barlow Clowes, 198

election of new Prime Minister, 121-122

European Standing Committee, 295 House of Commons disqualification, 130

House of Lords: Royal assent after refusal of second reading, 455 members' deselection, 5

members' interests: report, 295
ministerial pensions and salaries, 294
oral questions, limits on, 130
Parliament Acts, use of, 455
procedure, 130, 611
purposive construction of statute,

126–127 select committees

European legislation, 130 extension of scrutiny, 455 Home Affairs, 611

privatised industries, regulation of, 18-19

procedure: 2nd report, 130 sentencing policy for murder, 36 sovereignty

not to frustrate Community law, 191 suspension of statute, 119 standing committee on European,

legislation, 130 statutory instruments passed, 295 televising proceedings, 456

true intention of, in construction of statutes, 327

Parole Board, status under EC law, 37

Police.

arrest, nature of, 130 breath test procedure, 456 co-operation, 295 codes of practice, 130, 295 Complaints Authority

confidentiality of correspondence,

reports, 456

discrimination within, 319-320 documents seized by, confidentiality

of, 117 evidence unfairly obtained, 611–612 exclusion of evidence, 295

identification parades, procedure for, 130

interview, meaning of, 612 investigating offence: meaning, 456 reports, 456, 612 seizure of documents, 601

statistics, 456. See also Legal advice at police stations: Right of silence

Political parties.

Privatised industries—cont.

leadership elections, 1, 4–5, 121–122	Secretary of State's advice to Direc-
Poll tax. See Community Charge	tors, 16
Prerogative of mercy, 386–407	telecommunications, licensing system,
categories of use	15–16
change in interpretation of law, 388	Procedure,
fresh evidence, 388, 389	abuse of process, 457
Home Secretary's discretion, 388–390, 407	assistance in conducting proceedings, 612-613
reference to Court of Appeal, 386-387, 389-390	civil jury trials: personal injuries, 457 confiscation order, 132
unwillingness to exact full penalty, 389	counsel's meeting with judge, 131–132 Courts and Legal Services Act 1990,
compensation for miscarriage of jus-	296
tice, 387	damages: need for consistency, 457
judicial review of, 390-407	defendant's evidence from witness box.
attitude of courts, 390-394	297
justiciability, 394-400	detention beyond time limits, 297
model for, 403-407	discovery under Financial Services Act
non-reviewability, arguments for,	1986, 10-15
400-402	effect of delay, 131
reviewability, arguments for, 402-403	exchange of witness statements, 296-297
justiciability.	forfeiture of recognisance, 132
sub judice rule, 396	interlocutory decisions, judicial review
meaning of, 386-387	of, 14-15
secrecy of proceedings, 390	judge's room consultations in.
Prime minister.	131-132, 297
end of prime ministerial government,	lenient sentences, 297
1-6	McKenzie friends, 297
patronage, 4	mode of trial: guidelines for "either
Security Commission, activator of, 218	way" offences, 132
Prisons,	procedural impropriety and natural
disturbances, 296	justice, 167–168
duty of care to prisoners, 130-131	Takeover Panel's concerns about for-
duty to give reasons, 296	mality, 156-157
interference with correspondence, 131	tape recorded evidence, 131
"internal decision" principle (France),	television links, 297
300	tribunals, model rules for, 458
judicial review case-load, 496–497	Prohibition,
mandatory life sentences, 456–457	background to 66. See also Remedies
Parole Board: report, 612	in public law
reports, 131, 457	Proportionality,
statistics, 131	discretion to restrict broadcasting,
tort actions, availability of, 612	283-284
Woolf report, 612. See also Freedom of	doubts as to legitimacy of doctrine.
person	349-353
Privatised industries,	in EC law, development of, 58,
amending licences, 16-17	350–353
consumer representation, 18	Public authorities,
control of monopoly powers, 551-554.	decisions of legislative nature: proce-
See also Monopoly powers	dural fairness, 167
Director Generals' powers, 16–17	Highlands and Islands Development
openness in, 17–18	Board, 132–133
regulation of, 15–20	Scottish Development Agency, 132
governmental control, 15-16	toll roads, 613
judicial review, 19	Public decency,
parliamentary control, 18–19 regulatory bodies, 16–18	annoyance of passengers, meaning of,
regulatory cooles, 10-16	133

Remedies in public law-cont. Public decency-cont. prohibition, 66 common law offensiveness, 20-29 quo warranto jurisdiction, 67 abolition recommended, 28-29 Right of silence, 233-254, 243-252 history of offence, 21-22 advice against, 249-251 public good defence, 26-27 advice on, 243-249 related statutes, 23-24 sentencing implications, 28 arguments against, 233-234 presumption of innocence, 234 strict liability, 27-28 without legal advice, 251-252 vagueness of definition, 24-26 Rule of law. Public good. Bill of Rights, application of, 33-34 presence not conducive to," in depordefinition, 64 tation cases, 333-335 New Zealand cases, 29-34 Public order. aggravated trespass, 457 private rights under, 33 Rushdie, Salman. See Blasphemy and football offences, 613 mental element in offence, 613 racial hatred passenger, meaning of, 133 Public policy. Scots law, appeals jurisdiction where EC law in interpretation of statutes, 326-331 element, 120 Punishment. inhuman or degrading, in Zimbabwe, European Convention on Human Rights, 40-51 481-483 administrative law, role in, 49-51 as aid to development of common Race relations. law, 45-49 rented housing: code of practice, 288. as aid to statutory construction, See also Immigration 43-45 Reasons for decisions, limited recognition of, 40-41 adequacy of, 298 duty to give, 290, 296, 340-346 national legislation required for enforceable rights, 42-43 common law duty, 341-344 Securities and Investment Board. implications from failure to give. power to investigate investment busi-345-346 ness, 193, 195, 198 public bodies, 340 Security Commission, 215-232 legitimate expectation, and, 165-167 access to files, 222 Remedies in public law, 64-75 background, 65-67 background to, 215-217 composition, 220-221 certiorari, 65-66 constitutional status, 217-225 civil law and common law, discourts, relationship with, 223-224 tinguished, 64-65 evaluation, 225-230 declaration, 67 future of, 230-232 habeas corpus, 65 impartiality questioned, 229-230 injunction, 67 judicial discretion as to, interview powers, 221 judiciary's involvement, 228-230 English and continental practice, political consensus on security matters, 64-65 grounds for exercise of, 68-75 Prime Minister's role, 218-219, 225 acquiescence, 70-71 procedure, 221-225 adverse public consequences, 74 delay, 68-69 reports, 224-225, 449 security proposals, 226-227 exhaustion of other remedies. as tribunal, 221, 223 71-72 Self-regulating organisations (S.R.O.s), inevitability of outcome, 72-73 judicial review of commissioner's no useful purpose, 73 restricted areas, 74-75 decisions, 10-15 standing, 69-70 Sentencing. discretionary life sentences in EC. limits on, 75 meaning of, 67 34-40. See also European Com-

munity law

Silence. See Right of silence.

nature of, 67

mandamus, 66-67

Social security.

amendments to law, 133

disability allowances, 614

Pensions Ombudsman, 133

policy directions, validity of, 457–458 validity of regulations, 297–298

Spain.

constitutional court's influence on broadcasting, 93

Statutes.

Advisory Committee on Statute Law,

Crown immunity. See Crown immunity

interpretation of, 327–328 Australia, 361–370

European Convention on Human Rights, as aid to construction,

43-45

intention of legislators, 327 Israeli, judicial review of, 529–530

non-statutory guidance in NHS, 266–267

suspension of, by EC law, 119, 566–567 texts, 611

Takeover Panel, 149-159

aims of, 151

EC 13th Directive on Company Law, 149-159

concerns about, 152-159

increased scope for judicial review, 153-155

judicial interference in Panel. decisions, 155-156

decisions, 155–156 retrospective quashing of Panel decisions, 157–159

principles, 151-152

requirements of, 151

judicial review of, 149

working practices, 150-151

Tort,

actions against prison authorities, 614

liability of justices, 298

misfeasance in public office, 133

overworked doctor: foreseeability of damage, 298

Town and Country Planning.

efficient planning, 133

relevant considerations, 298 Trade and Industry, Department of,

Barlow Clowes, licensing of, 192–214, 408–442

Trade unions,

Labour leadership elections, role in, 5

Treaties, legislation required to give effect to, 42

I ribunals.

Conveyancing Appeal, 8 Council on. See Council on Tribunals discretionary life sentences, for review

of (proposed), 38-40

of Inquiry,

Royal Commission on, 217

security breaches, 215-217

internal review in place of, 7-8

Mental Health, 38-39

model rules of procedure, 458

one-person, 7-8

over-formalism in, 10

Security Commission. See Security Commission,

trend away from, 7-8

United States,

control of monopoly powers, 543–551

courts' influence on broadcasting, 93-94

